

REMARKS

This Amendment & Response amends no claims, cancels no claims, and adds no new claims. Claims 25-27 remain pending in the application.

Objections/Rejections Under 35 U.S.C. §112

1.0 *The Examiner has rejected claim 27 as unsupported by the original specification.*

The Examiner contends that the specification does not provide an enabling disclosure for achieving the claim limitation of “*inner and outer layers ... biased towards a standard position relative to one another*”. Applicant respectfully disagrees.

Paragraphs [0035] through [0037] and [0068] disclose the use of elastic inner and outer layers and/or elastic anchors for purposes of permitting “recoverable repositioning of the layers”.

The Examiner once again appears to be requiring an *in haec verba* correspondence of the terminology used in the claims and the terminology used in the specification. No such requirement exists. *See*, M.P.E.P. §2163.02 [STANDARD FOR DETERMINING COMPLIANCE WITH THE WRITTEN DESCRIPTION REQUIREMENT].

Withdrawal of this rejection is respectfully requested.

Objections/Rejections Under 35 U.S.C. §102 and §103

2.0 *The Examiner has rejected claims 25-27 as anticipated by Franzen.*

SUMMARY OF CITED REFERENCE

Franzen (United States Patent No. 4,062,067) discloses protective headgear (11) having a horizontal band (12) attached to a vertical band (14) at a single point by a suitable attachment mechanism such as a snap fastener (*i.e.*, a male snap half (26) on the vertical band (14) and a female snap half (28) on the horizontal band 12), sewing, riveting etc. [Column 2, Lines 18-24].

Franzen is silent as to whether the attachment mechanism permits pivoting of the bands relative to one another about the point of attachment.

SUMMARY OF CLAIMED INVENTION

The Present Claimed Invention is a protective headguard with overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through these points of attachment.

LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." *Atlas Powder Co. v. E.I. duPont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

FRANZEN DOES NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION.

The Present Claimed Invention is directed to protective headgear that attaches inner and outer layers at a *pair of diametrically opposed points of attachment* so as to permit *pivoting* of the outer layer relative to the inner layer about a pivot axis extending through the points of attachment. In contrast, Franzen discloses protective headgear with horizontal and vertical bands that are attached at a single point, with no indication as to whether the attachment mechanism allows the bands to pivot relative to one another. It is noted that the attachment mechanisms

disclosed by Franzen (*i.e.*, snap fasteners, sewing, riveting etc.) do not inherently permit pivoting about the attachment mechanism.

Clearly, Franzen does not disclose, teach or suggest the claimed invention.

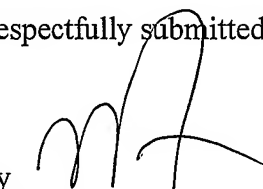
CONCLUSION

Applicant respectfully submits that all pending claims (claims 25-27) are in condition for allowance.

Respectfully submitted,

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By



Michael S. Sherrill, #32,302
SHERRILL LAW OFFICES, PLLC
4756 Banning Avenue, Suite 212
White Bear Lake, Minnesota 55110-3205
(651) 426-2400